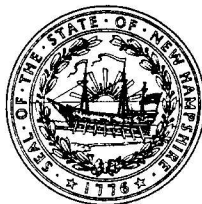


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

PETER W. HEED
ATTORNEY GENERAL



KELLY A. AYOTTE
DEPUTY ATTORNEY GENERAL

June 1, 2004

VIA UPS NEXT DAY Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
1800 G. St., N.W.
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Right Act for:
 Redistricting of New Hampshire State Senate Districts

Dear Voting Section Chief:

Pursuant to 42 U.S.C. §1973(c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits a redistricting plan for the New Hampshire State Senate districts, a "change affecting voting" for pre-clearance review by the United States Attorney General.

REQUEST FOR EXPEDITED CONSIDERATION

The period for candidates to file for the office of State Senator runs from June 2, 2004 to June 11, 2004. New Hampshire Revised Statutes Annotated ("RSA") 655:14, RSA 655:20. The New Hampshire Supreme Court has enjoined the filing period. See Exhibit O, Order dated May 28, 20004. Pursuant to 28 CFR §51.34 the State of New Hampshire requests expedited consideration. Final approval of this redistricting plan occurred on May 28, 2004. This submission is being timely submitted.

Should the State be prohibited from allowing candidates to file for office in accordance with the statutory timeline because the changes to State Senate redistricting have not yet received Voting Rights Act pre-clearance it would be disruptive to New Hampshire's election process. State action to delay the filing period would itself be a "change affecting voting," itself subject to pre-clearance, triggering further delay and confusion. We therefore request that this submission receive expedited consideration and that a notice of a decision not to object pursuant to 28 C.F.R. §51.41 be sent to the State of New Hampshire as soon as possible.

SUBMISSION

In accordance with 28 C.F.R. §51. 27, the submission is as follows:

(a) Exhibit A. A copy of House Bill 264 (2004) as enacted by the New Hampshire legislature and signed into law by the Governor on May 28, 2004 amending RSA 662:3 which divides the State of New Hampshire into twenty-four Senate districts. The ideal population for a Senate district is 51,491.

(b) Exhibit B. A copy of *Below v. Gardner*, 148 N.H. 1 (2002), the decision of the New Hampshire Supreme Court which established the districting plan which is being changed by House Bill 264 (2004) and Exhibit C, a copy of the Court's Order in *Below* dated July 11, 2002 altering Senate Districts 12 and 13.

(c) House Bill 264 (2004) affects the following five covered jurisdictions:

Benton is part of Senate district 2 both before and after the change. Under the *Below* court order, Senate district 2 had a population of 50,685 and a deviation of -1.57%. As a result of the changes made by House Bill 264 (2004) the population will be 50,903 and the deviation will be -1.1%. The change that affects the covered jurisdiction, Benton, is that the population of its Senate district is increased by 218 people and thereby the deviation from ideal population is decreased by 0.47%.

Antrim and Boscawen are part of Senate district 7 both before and after the change. Under the *Below* court order, Senate district 7 had a population of 50,632 and a deviation of -1.67%. As a result of the changes made by House Bill 264 (2004) the population will be 49,601 and the deviation will be -3.67%. The change that affects the covered jurisdictions, Antrim and Boscawen, is that the population of their Senate district is reduced by 1031 people and thereby the deviation from ideal is increased by 2%.

Unity is part of Senate district 8 both before and after the change. Under the *Below* court order Senate district 8 had a population of 51,062 and a deviation of -0.83%. As a result of the changes made by House Bill 264 (2004) the population will

be 50,865 and the deviation will be -1.22% . The change that affects the covered jurisdiction, Unity, is that the population of its Senate district is reduced by 197 people and thereby the deviation from ideal is increased by 0.83% .

Ringe is part of Senate district 11 both before and after the change. Under the *Below* court order Senate district 11 had a population of 50,772 and a deviation of -1.40% . As a result of the changes made by House Bill 264 (2004) the population will be 53,027 and the deviation will be 2.98% . The change that affects the covered jurisdiction, Ringe, is that the population of its Senate district is increased by 2255 people and thereby the deviation from ideal changes 4.38% to a positive deviation of 2.98% .

The remaining covered jurisdictions, Millsfield, Newington, Pinkham's Grant, Stewartstown, and Stratford remain in the same Senate districts and the populations and makeup of those districts are not changed by House Bill 264 (2004).

House Bill 264 partially redistricts the Senate districts for the State of New Hampshire. This is the first redistricting completed by the New Hampshire Legislature since the 2000 census.

(d) This submission is made by Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, phone number (603) 271-1238.

(e) This submitting authority is New Hampshire Attorney General Peter W. Heed for the State of New Hampshire.

(f) Not applicable.

(g) The change for which pre-clearance is sought was made by an act of the New Hampshire General Court, the State's Legislature.

(h) The New Hampshire General Court, the State's Legislature, acted pursuant the New Hampshire Constitution Part Second Articles 25, 26 and its general lawmaking powers set forth in Part Second Article 5. The bill changing RSA 662:3 and replacing the court ordered *Below* plan was approved by the Governor of the State of New Hampshire pursuant to the New Hampshire Constitution Part Second, Article 44. The procedures followed are the typical procedures for adopting a law.

(i) The final Legislative adoption of House Bill 264 occurred on May 13, 2004, the date it was passed in the New Hampshire House, the Governor signed the bill into law on May 28, 2004.

(j) House Bill 264 became effective on May 28, 2004.

(k) The changes made by House Bill 264 have not yet been enforced.

(l) House Bill 264 redistricts portions of the state. The population of the towns that are moved from one district to another constitute only 7.3% of the state's population. Nine of the 24 Senate districts (37.5.8%) established by the court in the *Below* decision are affected. No covered jurisdiction is moved to a different Senate district. Five covered jurisdictions are affected only to the extent that *de minimus* population changes are made to the Senate districts in which each is located.

(m) The changes made by House Bill 264 (2004) were made to adjust the State Senate Districts to reflect changes in the distribution of the population in New Hampshire as reflected by the 2000 federal census.

(n) The changes made by House Bill 264 (2004) have no anticipated effects on members of racial or language minority groups statewide, and specifically are expected to have no effect on the racial or language minority groups residing in the ten jurisdictions covered by section 5 of the Voting Rights Act. Only five covered jurisdictions are affected and the effect is a *de minimus* change in to the overall population of the Senate districts of which each is a part. After the changes, the greatest absolute deviation in any Senate District that contains a covered jurisdiction is 3.67%.

(o) A Petition for Original Jurisdiction challenging the enactment of House Bill 264 has been filed with the New Hampshire Supreme Court. *See Below v. New Hampshire Secretary of State*, attached as Exhibit D. The Petitioners challenge (A) the authority of the Legislature under the New Hampshire Constitution to redistrict following a redistricting ordered by the State Supreme Court; (B) whether the deviation from the ideal district sizes in the districts created by House Bill 264 violate the United States Constitution; (C) not applicable to this submission – a parallel challenge to the State House of Representatives redistricting; (D) whether the deviation from the ideal district size for Senate districts violates the New Hampshire Constitution; (E) whether the State is barred from conducting candidate filing because House Bill 264 has not yet been precleared; (F) whether the new districts are barred because of an alleged failure by the Legislature to follow census tracts when they established districts.

Issue (A) is not relevant to this submission. Whether the Legislature's authority to redistrict is limited to one redistricting following the decennial census and, if so, whether a court ordered redistricting constitutes the only Legislative redistricting allowed during that ten year period is not pertinent to the change affecting voting being submitted for preclearance.

Issue (B) is not relevant to this submission. The size of the Senate Districts for only five covered jurisdictions are changed by House Bill 264. These changes, as described above, are *de minimus*. Whether changes to Senate districts that do not contain covered jurisdictions result in an impermissible range of deviation is not pertinent to the covered jurisdictions. Application of the 10% (*Brown v. Thompson*, 462 U.S. 835, 842-43 (1983) or 16.4% (*Mahan v. Howell*, 410 U.S. 315, 319 (1973) range of deviation standards indicate that the House Bill 264 (2004) plan complies with Constitutional equal protection requirements. The House Bill 264 redistricting plan has a mean deviation of 2.02% and a range of deviation of 9.48%.¹

Issue (C) poses, relative to State House districts, the same question as (D) and as this submission is limited to Senate districts, it is not pertinent.

Issue (D) is not relevant to this submission. This is a State Constitutional question; whether the State Constitution is less tolerant of deviation in district size than the Federal Constitution.

Issue (E) is about this submission, and addresses whether candidate filing must be enjoined during the period between submission and non objection. Expedited consideration of this submission will moot this issue.

Issue (F) is not pertinent to this submission. Issue (F) addresses city ward redistricting in Nashua, a New Hampshire city that is not subject to preclearance. Petitioners allege that a newly drawn ward line fails to follow census tract lines making the determination of the population according to the census unknowable. The resolution of these disputed facts and legal questions do not affect any jurisdiction subject to preclearance, therefore, the issue is not pertinent to this submission.

There is no other known past and no other pending litigation concerning the changes for which preclearance is being sought.

(p) The Department of Justice precleared the court ordered *Below* plan. The non-objection letter is stamped September 5, 2002. Exhibit E. The procedure for the adoption of the change, the enactment of laws by the New Hampshire General Court with approval by the Governor, is not subject to preclearance as it is the same process that was in effect prior to 1968.

¹ Calculations are based on city ward populations reported by city officials. Petitioners in *Below v. New Hampshire Secretary of State* allege that post census redistricting of city wards has created uncertainty as to the validity of these population figures. None of the city wards at issue are subject to preclearance.

(q) §51.28 (a)(1) - A data file conforming to the specifications of §51.28 (5) describing the census tracts in each State Senate District is contained on the enclosed floppy disk as Exhibit F. Census data is attached at Exhibit G.

The previous districting scheme, the *Below* court ordered plan, and the House Bill 264 change to the five covered jurisdictions are both based on the 2000 census. The total population for each District containing a covered jurisdiction before and after is set forth below:

Covered Jurisdiction/Senate District Number	Population under Court's <i>Below</i> Order (Before change)	Population under House Bill 264 (2004) (After change)
Benton – District 2	50,685	50,903
Antrim & Boscawen – District 7	50,632	49,601
Unity – District 8	51,062	50,865
Ringe – District 11	50,772	53,027

Voting Age population is provided in the files in Exhibit F.

§51.28 (b)(1) – Exhibit H is a map of the State Senate districts before the change and Exhibit I is a map of the State Senate districts after the change.

(r) Other Information.

§51.28 – (a) (2) Registered Voter information is available only in the aggregate, no data is available from state sources by race or language groups. Exhibit J is a table showing the number of registered voters by voting precinct (town or city ward) for the State.

§51.28 (a)(3) Other than the data in the census reports, the submitting authority is not aware of any estimates being made of the population by race or language group as part of the redistricting process. It is noteworthy that, aggregating the ten towns subject to section 5 of the Voting Rights Act, the largest single race or language minority group consists of less than 1 percent of the population and all of the protected group members combined constitute 511 people or 3.2 percent of the total population of the ten towns.

New Hampshire is racially homogeneous. Statewide census statistics report the population is 96% white. Because the non-white population is evenly distributed throughout the State, shifts in State Senate district lines have virtually no effect on protected class members statewide. The census tract with the largest population of non-whites is Hanover CDP, home of the State's Ivy League College – Dartmouth,

with 14.7 percent of the population belonging to a race category other than white. Only thirteen census jurisdictions have less than 95 percent white population. See Exhibit K, a chart showing the percentage of the population which is white by census jurisdiction, and exhibit L a table of the census data on which the chart is based. The size of the non-white population in New Hampshire is so small and so evenly distributed throughout the State that it is impossible to create any minority majority State Senate districts that affect covered jurisdictions. The shifting of district lines effected by House Bill 264 does not have any compacting or dilution effects.

§51.28 (b)(3) As discussed above and reflected in Exhibits K and L the location of racial and language minority groups is evenly distributed across the State. Other than the data provided by the Census, no maps have been created as part of the redistricting process, to the knowledge of the submitting authority, that identify the location of racial or language minority groups.

§51.28 (c) – not applicable

§51.28 (d) & §51.28 (e) Not applicable as the change made by House Bill 264 (2004) does not affect the electoral influence of a racial or language minority group for the reasons explained above.

§51.28 (f) The changes made by House Bill 264 (2004) have not been controversial in terms the effect on race or language minority groups. See Exhibit M, Docket for House Bill 264 showing the dates of the Legislative hearings and public votes on this bill. The changes made by House Bill 264 (2004) have been controversial within New Hampshire only to the extent that there has been debate as to whether the New Hampshire Constitutional imposes a greater limitation on deviation in population between districts or on political gerrymandering than does the federal constitution.

§51.28 (g) Exhibit N. Press Release on this submission and its availability.

§51.28 (h) Not applicable.

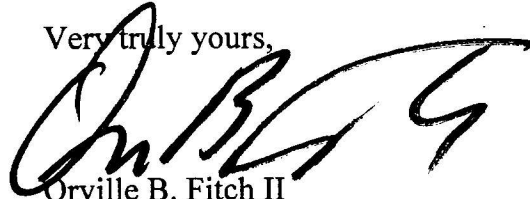
NH State Senate Redistricting VRA §5 submission

June 1, 2004

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I trust the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Orville B. Fitch II", written over the typed name.

Orville B. Fitch II
Assistant Attorney General
Civil Bureau
(603) 271-1238

OBF/jsh

Table of Exhibits

- Exhibit A – A copy of House Bill 264 (2004), the new law partially redistricting the State Senate districts.
- Exhibit B – A copy of *Below v. Gardner*, 148 N.H. 1 (2002), the Order of the New Hampshire Supreme Court, which along with Exhibit C, established the districts being changed by House Bill 264 (2004).
- Exhibit C – A copy of the Court's Order in *Below*, dated July 11, 2002, altering Senate Districts 12 and 13.
- Exhibit D – Petition challenging House Bill 264 (2004) *Below v. New Hampshire Secretary of State*.
- Exhibit E – *Below* plan DOJ non-objection letter, evidence prior redistricting was precleared.
- Exhibit F – Floppy disk(s) with the data files. (This Exhibit is not included and will be submitted under separate cover.)²
- Exhibit G – Census Data.
- Exhibit H – Map of districts before the change.
- Exhibit I – Map of districts after the change. (This Exhibit is not included and will be submitted under separate cover.)
- Exhibit J – Table of data on Registered Voters Statewide.
- Exhibit K – Line chart showing NH 95% white – distribution among jurisdictions is relatively even.
- Exhibit L – Table showing data used to make Exhibit K.
- Exhibit M – Docket for House Bill 264 (2004) showing public hearings and votes leading up to its adoption.

² The redistricting being submitted for preclearance is a partial redistricting of a Court ordered redistricting based on the 2000 census. The redistricting process utilized census data aggregated in that process by town and ward. On information and belief, maps were not drawn and census tract level electronic data files were not generated. The submitting authority is having these exhibits prepared and they will be submitted as soon as they are available. The census data necessary for this filing is addressed in the description of the changes being made.

Exhibit N - Press Release giving notice of the availability of this submission for review and inviting comments to the Federal Department of Justice.

Exhibit O - New Hampshire Supreme Court Order, dated May 28, 2004 enjoining the filing period.

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